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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,375	02/07/2001	Mattias Schmidt	8414Q	6856
27752	7590	01/05/2005	EXAMINER	
			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 01/05/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/778,375	SCHMIDT ET AL.	
	Examiner	Art Unit	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 October 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 and 10-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.
_____.
_____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1 and 10 – 16 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson (WO 98/31402).

With respect to claim 1, Robinson discloses an absorbent article comprising a liquid impervious backsheet (3), a liquid pervious topsheet (2) joined to the backsheet (figure 1), an absorbent core disposed intermediate the topsheet and the backsheet (6) and a phase change material (5) disposed on at least a portion of the article as set forth on page 2, lines 4 – 7.

The difference between Robinson and claim 1 is the provision that the phase change material is used at a basis weight of at least about 100gsm.

It would have been obvious to one of ordinary skill in the art to use the phase change material at a basis weight of at least about 100gsm since it has been held that

a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 1, 10 – 11 and 14 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasse (US 5,591,146).

With respect to claim 1, Hasse discloses an absorbent article comprising a backsheet (26), a liquid pervious topsheet joined to the backsheet (24), an absorbent core disposed intermediate to the topsheet and the backsheet (28), and a phase change material (89) disposed at least on a portion of the article as set forth in figure 2.

The difference between Hasse and claim 1 is the provision that the phase change material is used at a basis weight of at least about 100gsm.

It would have been obvious to one of ordinary skill in the art to use the phase change material at a basis weight of at least about 100gsm since it has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the

prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claim 10, Hasse discloses an absorbent article wherein the thermal cell actuator is removable from the article as set forth in col. 10, lines 35 – 39 and figure 2.

The thermal cell actuator, or microcapsules, are removable from the article upon the removal of the release liner which releases the perfume from the microcapsules.

As to claim 11, Hasse discloses the thermal cell actuator being attachable to the article as set forth in col. 7, lines 11 – 16. The attachment system which houses the thermal cell actuator (microcapsules) is taught as being attached to the article via an adhesive layer (90).

With reference to claim 14, Hasse discloses an article wherein the phase change material effects a decrease in malodorous vapors in the article when the phase change material changes phases as set forth in col. 11, lines 5 – 8.

As to claim 15, Hasse discloses an absorbent article wherein the phase change material effects an increase in fragrance in the article when the phase change material changes phases as set forth in col. 11, lines 5 – 8.

Hasse discloses a material that encapsulates a fragrance. As the system is manipulated, the microcapsules are released and change from one phase (encapsulated) to another phase (diffused) as taught by Hasse in col. 8, lines 16 – 18.

As to claim 16, Hasse discloses an absorbent article comprising a liquid impervious backsheet (26), a liquid pervious topsheet joined to the backsheet (24), an

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absorbent core disposed intermediate to the topsheet and the backsheet (28), and a thermal cell actuator (95,96) disposed on or adjacent to at least on a portion of the article to effect a change in at least one property other than temperature in at least a portion of the article as set forth in col. 11, lines 5 – 26.

The thermal cell actuator is in the form of microcapsules that effect malodor of the article upon their release.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,156,911).

With respect to claim 1, Stewart discloses an absorbent article (col. 4, line 10) comprising a phase change material disposed on at least a portion of the article as set forth in col. 3, lines 49 – 58.

The difference between Stewart and claim 1 is the provision that the absorbent article comprises a liquid impervious backsheet, a liquid pervious topsheet joined to the backsheet and an absorbent core disposed intermediate the topsheet and the backsheet, and the provision that the phase change material is used at a basis weight of at least about 100gsm.

It would have been obvious to one of ordinary skill in the art to provide the absorbent article of Stewart with a liquid pervious topsheet joined to the backsheet and an absorbent core disposed therebetween because Stewart discloses a bandaid as being suitable for use with the invention (col. 4, line 11), and it is well known in the art that the structure of a bandaid, or bandage, encompasses a liquid pervious topsheet joined to a liquid impervious backsheet with an absorbent core disposed therebetween.

Likewise, it would have been obvious to one of ordinary skill in the art to use the phase change material at a basis weight of at least about 100gsm since it has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Allowable Subject Matter

Claims 12 – 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michele Kidwell
Michele Kidwell
Examiner
Art Unit 3761